

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 6157 of 2004

Between:

M/s. Antrodes Industries Rep by Managing Partner A. Kumar s/o A.Madhava Rao
having its Place at Plot No. 103, Everest Block, Aditya Enclave, Ameerpet,
Hyderabad-500 016

..... PETITIONER

AND

1 A.P. State Financial Corporation rep by Vice Chairman & Managing Director,
Chirag Ali

Lane, Hyderabad

2 The Branch Manager, A.P. State Financial Corporation, Ranga Reddy West
Branch, 5-8-342,

Ground Floor, Chirag Ali Lane, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of mandamus declaring the action of the respondents in seizing the unit of the petitioner situated at 44-A, Phase-IV, I.D. A Jeedimetla, Ranga Reddy District for recovery of alleged overdue instalments including penal interest as illegal and void.

Counsel for the Petitioner: MR.T.LAKSHMI NARAYANA

Counsel for the Respondents: MR.Y.N.LOHITA

The Court made the following :

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ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in seizing the unit of the petitioner situated at 44-A, Phase-IV, I.D.A. Jeedimetla, Ranga Reddy District for recovery of the alleged overdue instalments including penal interest as illegal and arbitrary.

For the purpose of obtaining loan, the parties have entered into an agreement. The only grievance of the petitioner is that the action of the respondents in seeking to seize the unit of the petitioner in order to enforce the clause *terrorum* contained in the contract between the parties is unsustainable under law as the penal interest stipulated in the agreement cannot be recovered unless the quantum of damage is assessed by an independent agency in terms of Section 73 of the Contract Act.

The respondents filed counter affidavit stating that an amount of Rs.12,04,792/- is due from the petitioner as on 31.10.2004 which includes the principal, interest and other expenses. It is purely a contractual matter entered into between the parties.

Heard the learned counsel for both the parties and perused the material on record.

It is purely a contractual matter between the petitioner and the respondents. The scope of judicial review is circumscribed to the extent that unless an administrative action is patently arbitrary and illegal, the Courts will not interfere with the contractual matters. It is nowhere stated in the affidavit that the action of the respondents in seizing the unit is arbitrary and illegal.

In order to give an opportunity to the petitioner to run the unit, this Court, by an interim order passed in W.P.M.P.No.7996 of 2004, directed the petitioner to pay Rs.1,00,000/- every month commencing from the date of order i.e. 5.4.2004 and continue to pay installments. The petitioner paid one lakh rupees and the respondents handed over the possession of the unit to the petitioner. Thereafter, the petitioner did not pay any amount and came forward with W.P.M.P.No.13183 of 2004 seeking modification of the order, dated 5.4.2004. The interim order passed by this Court in W.P.M.P.No.7996 of 2003 is not modified, but the petitioner continued to pay an amount of Rs.25,000/- per month. The petitioner utterly violated the orders of this Court and therefore, it does not deserve any sympathy. Hence, the writ petition is devoid of merit.

The writ petition is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

10th February, 2005.

bcj

To

- 1 A.P. State Financial Corporation rep by Vice Chairman & Managing Director,
Chirag Ali Lane, Hyderabad
- 2 The Branch Manager, A.P. State Financial Corporation, Ranga Reddy West
Branch, 5-8-342, Ground Floor, Chirag Ali Lane, Hyderabad
- 3 Two C.D. copies.

Note: Furnish C.C. by Monday.

B/o.

Bcj